

APPEAL NO. 041489
FILED JULY 30, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 12, 2004. The hearing officer determined that the appellant's (claimant herein) injury does include degenerative disc disease at L4-5, failed back syndrome, and lumbar strain after February 27, 2002. The hearing officer also determined that the claimant is not entitled to supplemental income benefits (SIBs) for the third, fourth, fifth, sixth, and seventh quarters, and that the respondent (carrier herein) is relieved of liability for SIBs for the entire third quarter and a portion (October 18 through October 30, 2002) of the fourth quarter because of the claimant's failure to timely file for SIBs. Finally, the hearing officer determined that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because he was not entitled to them for 12 consecutive months. The claimant appeals the hearing officer's determinations that he is not entitled to SIBs for the third through seventh quarters, that the carrier is relieved of liability for SIBs for the third and part of the fourth quarters, and that he has permanently lost entitlement to SIBs. The carrier responds that the decision of the hearing officer should be affirmed. No one appeals the hearing officer's resolution of the extent-of-injury issue and it has become final pursuant to Section 410.169.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion at issue is whether, during the qualifying periods for the third through seventh quarters, the claimant made a good faith effort to obtain employment commensurate with his ability to work. The claimant asserted that he had no ability to work due to his compensable injury. The hearing officer found that the claimant did not meet the requirements of Rule 130.102(d)(4). Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence presented at the CCH (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We conclude that the hearing officer's determination that the claimant is not entitled to SIBs for the third through the seventh quarters is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). As the hearing officer's determination of permanent loss of entitlement to SIBs pursuant to Section 408.146(c) is based upon her determination that the claimant

did not have entitlement for the third through the seventh quarters, having affirmed the latter determination, we likewise affirm the former.

Finally, relieving the carrier of liability for the third quarter and portion of the fourth quarter of SIBs is based upon her factual finding that the claimant failed to timely file an application for these benefits. Applying the standard of factual review above, we perceive no error in this finding.

The hearing officer's decision and order are affirmed.

The carrier states that the true corporate name of the insurance carrier is **ESIS/GREYHOUND, INC.** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge